



Barry Bogart (“Father”) appeals the trial court’s order terminating his parental rights as to his minor children, L.B. and K.B. He raises one issue, which we restate as whether the trial court abused its discretion when it denied Father’s motion to continue the termination hearing.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Father and Bridget Strong (“Mother”) have two children together, K.B., born June 11, 2001, and L.B., born July 24, 2002.<sup>1</sup> On March 30, 2005, the Henry County Department of Child Services (“DCS”) filed petitions alleging that K.B. and L.B. were Children in Need of Services (“CHINS”). Both parents admitted the allegations contained in the petitions, and the children were adjudicated as CHINS on July 29, 2005. *Pet’r’s Ex. 17*. Father was incarcerated at the time of the CHINS petitions.

Father had an extensive criminal history prior to the commencement of this case. He was classified as a Multi-State Offender and had been incarcerated in Ohio, Texas, and Indiana for substance abuse offenses and violent crimes. Specifically, in Indiana, Father had been convicted of battery as a Class A misdemeanor, possession of marijuana as a Class D felony, residential entry as a Class D felony, intimidation as a Class D felony, battery resulting in serious bodily injury as a Class C felony, disorderly conduct as a Class B misdemeanor, operating a vehicle while intoxicated as a Class A misdemeanor, criminal recklessness as a Class D felony, battery as a Class B misdemeanor, and possession of

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<sup>1</sup> Mother was originally a party to the termination proceedings, and she voluntarily consented to the termination of her parental rights to both children.

marijuana as a Class A misdemeanor. *Appellant's App.* at 5-6. During an interview with the DCS family case manager, Father stated that he had always had issues with anger. *Tr.* at 42. As part of the CHINS proceedings, Father was advised that to accomplish reunification with the children he needed to complete certain services while in prison, which included parenting classes, substance abuse classes, and anger management classes. *Id.* at 40-41.

In March 2006, Father was transferred from the Department of Correction to the Henry County Jail and assigned to work release. While in the work release program, Father came to the DCS office on two occasions for supervised visits with the children. Following a fight with an inmate, Father was removed from the work release program and placed on lock-down until the time of his release from incarceration, which made these visits no longer possible. During Father's time in lock-down, DCS arranged one subsequent visit at the jail between the children and Father. However, no further visits occurred because of the children's adverse reactions to visiting at the jail. Father was also required to seek employment and to pursue parenting classes while in the work release program. Although parenting classes were offered, Father did not take them while at the Henry County Jail, and after he was placed on lock-down, he was also unable to take any classes or pursue employment.

On June 12, 2006, DCS filed a petition for involuntary termination of Father's parental rights. Father was released from the Henry County Jail on August 6, 2006, but did not contact DCS upon his release even though he had been ordered to remain in contact with them. The termination hearing was held on August 22, 2006, and Father did not appear at the

hearing. Father's counsel requested a continuance because of Father's absence and to allow Father an opportunity to participate in services offered by DCS. *Tr.* at 3. Father's counsel had spoken to Father the day before the hearing, and Father was aware of the hearing date. *Id.* at 4. No reason was given for Father's absence from the hearing. The trial court denied the motion for a continuance, and the termination hearing was held. On September 11, 2006, the trial court issued its findings of fact and conclusions thereon terminating Father's parental rights. Father now appeals. Additional facts will be added as necessary.

### **DISCUSSION AND DECISION**

The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court. *Litherland v. McDonnell*, 796 N.E.2d 1237, 1240 (Ind. Ct. App. 2003), *trans. denied*. We will only reverse the trial court for an abuse of that discretion. *Id.* "An abuse of discretion may be found on the denial of a motion for a continuance when the moving party has shown good cause for granting the motion." *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. No abuse of discretion will be found when the moving party has not shown that he was prejudiced by the denial. *Id.*

Father argues that the trial court abused its discretion when it denied his motion to continue the termination hearing. He relies on this court's decision in *Rowlett* for his contention. In *Rowlett*, the father was incarcerated about two months after the CHINS case began and remained incarcerated during the entire termination proceeding. *Id.* at 618. He requested a continuance of the termination hearing until after his release, which was denied by the trial court. *Id.* A panel of this court concluded that the trial court had abused its

discretion in denying the motion for a continuance because the father had shown good cause for granting the motion in that it would provide him an opportunity to participate in services offered by the Office of Family and Children, which were directed at reunification with the children. *Id.* at 619. Furthermore, father had shown prejudice because his ability to care for the children had been assessed at the time of hearing when he was incarcerated and had not yet had the opportunity to participate in services or demonstrate his fitness as a parent. *Id.* It was also determined that termination was particularly harsh because the father had participated in numerous services and programs helpful in the goal of reunification while he was incarcerated. *Id.* The panel concluded that the trial court should have continued the termination hearing until “after Father was given a sufficient period following his release to demonstrate his willingness and ability to assume parental duties.” *Id.* at 620.

The *Rowlett* case is clearly distinguishable from the present case. Rowlett was still incarcerated at the time of the termination hearing; here, although Father had been incarcerated throughout the CHINS case, he had been released from jail sixteen days before the termination hearing and had failed to contact DCS during that time to set up services through them. Rowlett appeared at his termination hearing and testified as to his criminal history and prior drug use and how it had ruined his life; here, Father failed to appear at his hearing and no reason was given as to why he did not appear. While incarcerated, Rowlett took steps and made a good faith effort to better himself as a person and parent; here, Father completed substance abuse and anger management classes in 2003 and received credit time for doing so, but this was before the CHINS case was initiated. And even after taking those classes, Father battered another inmate while in the local jail and was placed in lock-down.

Prior to that incident, Father failed to take any parenting classes while in the work release program although they were offered, and because he was placed on lock-down for the duration of his incarceration, he was not able to take any classes or pursue employment as requested by DCS. Additionally, Father could no longer continue his supervised visitation with the children because he was placed in lock-down.

We conclude that Father has not shown good cause for granting his motion to continue the termination hearing. Father had an extensive criminal history, which consisted of several drug offenses and violent offenses. He was incarcerated due to some of these offenses, and while incarcerated, he battered another inmate and was placed in lock-down. Although Father claims that his incarceration did not allow him to fully participate in services that would aid in the reunification process, his own actions are to blame for this. Because he was placed in lock-down, he was no longer able to participate in the work release program and therefore was not able to take any parenting classes or to pursue employment. His supervised visitations with the children were also stopped because of his placement in lock-down. Further, there was evidence that Father had a history of failing to support his children. He had two older children from previous relationships for whom he did not provide child support; he had never even met one of these children, who was sixteen years old. There was also evidence that prior to his incarceration, Father never had a regular job and got money either from selling drugs or from Mother. *Tr.* at 63. He also did not have a good relationship with K.B. and L.B. because he was always on drugs. *Id.* at 64. We do not believe that Father has shown that the granting of his motion to continue the termination hearing would have allowed him an opportunity “to demonstrate his willingness and ability

to assume parental duties.” *Rowlett*, 841 N.E.2d at 620. Therefore, Father has not shown good cause for granting his motion for continuance, and the trial court did not abuse its discretion in denying his motion.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.